

**STATE BOARD OF EQUALIZATION**  
**BEFORE THE ADMINISTRATIVE JUDGE**

IN RE: Deborah Kapij )  
Dist. 19, Map 107, Control Map 107, Parcel 14.10 ) Bedford County  
Residential Property )  
Tax Year 2006 )

## INITIAL DECISION AND ORDER

## Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$25,000	\$88,900	\$114,400	\$28,600

An Appeal has been filed on behalf of the property owner with the State Board of Equalization on June 27, 2006.

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated (T.C.A.) §§ 67-5-1412, 67-5-1501 and 67-5-1505. This hearing was conducted on January 18, 2007, at the Bedford County Property Assessor's Office. Present at the hearing were Deborah Kapij, the taxpayer who represented herself and Rhonda Clanton, the Assessor for Bedford County, Mark Lamb an Appraiser, from the Property Assessor's Office, Bobby Spencer and Tom Winfrey from the Division of Property Assessments for the State of Tennessee.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a single family residence located at 1034 Pickle Road in Shelbyville, Tennessee.

The taxpayer, Ms. Kapij, contends that the property is worth \$104,000 based on the fact that there is a government drain pipe that is 16 feet 'around' that dumps water from other areas onto her property which produces a real "fear factor" to anyone who may wish to purchase the property. The area around her property floods whenever there is a heavy rain. Ms. Kapij indicated that she has had to "dig a trench in order to divert the water from completely flooding her property". Ms. Kapij stated that she was not aware of the drainage pipe when she purchased the property in May of 2004 as it was obscured by shrubs and bushes. The taxpayer states that she built her home in 2005 and began to notice the water problem (flooding). Ms. Kapij states, "The portion of my property that is used for this dumping of waters, restricts that portion of my property from being used, for any purpose. The taxpayer believes that the fact that the drainpipe is directly under the road is a factor that was omitted from consideration in the appraisal process, she continually asserts that "The market for my property is unique, with respect to government property (drainpipe)

having a devaluating effect on the value of my property. My property is less desirable for resale value and the Govt. [sic] drainpipe is directly responsible for that liability effect, on the value of 1034 Pickle Road”.

The assessor, through her witness from the Division of Property Assessments, Bobby Spencer, contends that the property should be valued at \$114,400. In support of this position, three comparable sales were introduced and is marked as collective exhibit number 1 as part of the record in this cause which supports the value from the County Board.<sup>1</sup> Mr. Spencer also asserts that while there is water, water has never gotten into the home. He also asserts that the property is valued at \$10,500 less than comparable land values in the area due to the ‘drainage pipe’ issue,<sup>2</sup> so the issue was not overlooked.

The germane issue is the value of the property as of January 1, 2006. The basis of valuation as stated in T.C.A. § 67-5-601(a) is that “[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . . .”

After having reviewed all the evidence in this case, the administrative judge finds that the subject property should be valued at \$114,400 based upon the presumption of correctness attaching to the decision of the Bedford County Board of Equalization and the supporting data from the Division of Property Assessments, State of Tennessee.

Since the taxpayer is appealing from the determination of the Bedford County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Control Board*, 620 S.W. 2d 515 (Tenn. App. 1981).

In this type of an appeal the petitioner must show by a preponderance of the evidence that an allegation is true or that the issue should be resolved in favor of that party. Uniform Rules of Procedure for Hearing Contested Cases. Rule 1360-4-1-.02 (7).

The administrative judge finds that the April 10, 1984, decision of the State Board of Equalization in *Laurel Hills Apartments, et. al.* (Davidson County, Tax Years 1981 and 1982) holds that “as a matter of law property in Tennessee is required to be valued and equalized according to the ‘Market Value Theory’.” As stated by the Board, the Market Value Theory requires that property “be appraised annually at **full market value** and equalized by application of the appropriate appraisal ratio . . .” *Id.* at 1.(emphasis added)

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<sup>1</sup> The comparables are physically located on the other side of Pickle Road and geographically close to the subject.

<sup>2</sup> The county has also filed several photos which show the water level at different times of the year on the subject property and the comparables.

The Assessment Appeals Commission elaborated upon the concept of equalization in *Franklin D. & Mildred J. Herndon* (Montgomery County, Tax Years 1989 and 1990) (June 24, 1991), when it rejected the taxpayer's equalization argument reasoning in pertinent part as follows:

In contending the entire property should be appraised at no more than \$60,000 for 1989 and 1990, the taxpayer is attempting to compare his appraisal with others. There are two flaws in this approach. First, while the taxpayer is certainly entitled to be appraised at no greater percentage of value than other taxpayers in Montgomery County on the basis of equalization, the assessor's proof establishes that this property is not appraised at any higher percentage of value than the level prevailing in Montgomery County for 1989 and 1990. That the taxpayer can find other properties which are more under appraised than average **does not entitle him to similar treatment**. Secondly, as was the case before the administrative judge, the taxpayer has produced an impressive number of "comparables" but has not **adequately indicated how the properties compare to his own in all relevant respects**. . . . (emphasis added)

Final Decision and Order at 2. See also *Earl and Edith LaFollette*, (Sevier County, Tax Years 1989 and 1990) (June 26, 1991), wherein the Commission rejected the taxpayer's equalization argument reasoning that "[t]he evidence of other tax-appraised values might be relevant if it indicated that properties throughout the county were under appraised . . ." Final Decision and Order at 3.

With respect to the issue of market value, the administrative judge finds that Ms. Kapij simply introduced insufficient evidence to affirmatively establish the market value of subject property as of January 1, 2006, the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a).

In analyzing the arguments of the taxpayer, the administrative judge must look to the applicable and acceptable standards in the industry when comparing the sales of similar properties.

The administrative judge finds that the procedure normally utilized in the sales comparison approach has been summarized in one authoritative text as follows:

To apply the sales comparison approach, an appraiser follows a systematic procedure.

1. Research the competitive market for information on sales transactions, listings, and offers to purchase or sell involving properties that are similar to the subject property in terms of characteristics such as property type, date of sale, size, physical condition, location, and land use constraints. The goal is to find a set of comparable sales as similar as possible to the subject property.
2. Verify the information by confirming that the data obtained is factually accurate and that the transactions reflect arm's-length, market considerations. Verification may elicit additional information about the market.

3. Select relevant units of comparison (e.g., price per acre, price per square foot, price per front foot) and develop a comparative analysis for each unit. The goal here is to define and identify a unit of comparison that explains market behavior.

4. Look for differences between the comparable sale properties and the subject property using the elements of comparison. Then **adjust the price of each sale property to reflect how it differs from the subject property or eliminate that property as a comparable**. This step typically involves using the most comparable sale properties and then adjusting for any remaining differences.

Reconcile the various value indications produced from the analysis of comparables into a single value indication or a range of values.

[Emphasis supplied] Appraisal Institute, *The Appraisal of Real Estate* at 422 (12<sup>th</sup> ed. 2001). Andrew B. & Majorie S. Kjellin, (Shelby County, 2005)

#### ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2006:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$25,000	\$88,900	\$114,400	\$28,600

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

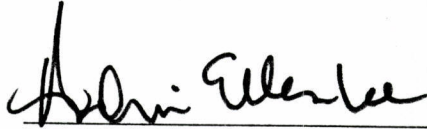
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal “**must be filed within thirty (30) days from the date the initial decision is sent.**” Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal “**identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order**”; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 27<sup>th</sup> day of February, 2007.



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ANDREI ELLEN LEE  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

c: Ms. Deborah A. Kapij  
Ronda Helton Clanton, Assessor of Property